STATE OF MICHIGAN

COURT OF APPEALS

ROBERT H. ROBB,

Plaintiff-Appellant,

v

FAIR HOUSING CENTER, a/k/a FAIR HOUSING ALLIANCE OF MID-MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
September 19, 2006

No. 259367
Jackson Circuit Court
LC No. 04-002848-CZ

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition, which was brought under MCR 2.116(C)(10). We affirm.

I

Plaintiff first argues that the trial court erred in granting summary disposition to defendant with regard to the claim of defamation. A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). This Court, like the trial court, must look at the record as a whole and, giving the nonmoving party the benefit of the doubt, determine if the record creates open issues on which reasonable minds could differ. *Id; Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). The moving party has the initial burden of supporting its position that there is no genuine issue regarding a material fact by pointing to affidavits, depositions, admissions, or other documentary evidence in the record. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the nonmoving party to show that a genuine issue of material fact does exist. *Id.* "Where the burden of proof at trial on a dispositive issue rests on the nonmoving party, that party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 574 NW2d 314 (1996). If the opposing party fails to present documentary evidence showing that there is a genuine issue of material fact, summary disposition is appropriate. *Id* at 362-363.

To establish a claim of defamation, a plaintiff must show: (1) a false and defamatory statement concerning the plaintiff, (2) unprivileged publication to a third party, (3) fault amounting to at least negligence, and (4) actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication (defamation per quod). *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998).

Plaintiff argues that defendant defamed him by way of an article in the Jackson Citizen Patriot newspaper. However, almost all of this article deals with allegations made in Michelle Campbell's[1] March 19, 2003, federal complaint against plaintiff.[2] Therefore, we conclude that the allegations were covered by an absolute privilege. *Sanders v Leeson Air Conditioning Corp*, 362 Mich 692, 695; 108 NW2d 761 (1961) (statements made in the course of judicial proceedings, in pleadings or in argument, as long as they are relevant, material, or pertinent to the issue, are absolutely privileged regardless of falsity or malice on the part of the author). Further, plaintiff has not provided any evidence in the record demonstrating that defendant was responsible for causing the allegations to be published in the Jackson Citizen Patriot. Plaintiff did not establish any defamation with regard to the newspaper article.

Plaintiff also argues that defendant defamed him during meetings of the Jackson City Commission. However, plaintiff did not attend the meetings, and he relied on inadmissible hearsay evidence to prove the false and defamatory statements that he alleges defendant made at the meetings. See MRE 801(c). Indeed, plaintiff relied on information obtained second-hand from his sister-in-law, who told him what was allegedly said at the meetings. A nonmoving party cannot defeat a motion for summary disposition without bringing forth substantively admissible evidence that a genuine issue of fact exists. *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 658; 653 NW2d 625 (2002). Plaintiff did file an affidavit from his attorney, who stated that he received "videotape copies of two public meetings" during which "a person purporting to be Tiffany Girard, executive director of [defendant]," made certain statements about Campbell's lawsuit against plaintiff. Even assuming that plaintiff's own attorney would be allowed to testify at trial in this case, the affidavit simply does not establish a defamation claim by way of admissible evidence. The attorney does not state in the affidavit that he attended the meetings in question but merely refers to videotapes that he claims are authentic representations of the meetings. Again, a nonmoving party cannot defeat a motion for summary disposition without bringing forth substantively admissible evidence that a genuine issue of fact exists. *Id.* Plaintiff simply failed to present sufficient evidence of defamation with regard to statements made at the Jackson City Commission meetings.[3]

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[1] Michelle Campbell filed a lawsuit against plaintiff, arguing that he discriminated against her in refusing to rent a house to her. Defendant assisted Campbell with the lawsuit.

[2] While defendant's director is quoted in the newspaper article as making a comment about racism, her comment does not refer to plaintiff and therefore does not defame him.

[3] Although plaintiff does not directly mention this meeting in his appellate arguments concerning the defamation claim, we additionally note that plaintiff failed to establish by way of admissible evidence that defendant defamed him during statements made at a Landlord Association meeting at a "Steak Eater" restaurant.

Plaintiff makes various other arguments in conjunction with his "defamation" claim on appeal, but none of these arguments serves to overcome the primary deficiency of his claim – i.e., his failure to set forth the elements of defamation by way of admissible evidence. The trial court did not err in granting summary disposition to defendant. While the trial court's reasoning differed in some respects from our ruling today, we note that we will not reverse a lower court's ruling when it reached the correct result for the different reasons. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n10; 443 NW2d 340 (1989).

II

Plaintiff next argues that the trial judge, Judge Schmucker, erred in failing to disqualify himself sua sponte because of the fact that another judge, Judge Mazur, worked in the same local courthouse in which Judge Schmucker worked and was a member of defendant's board of directors. Plaintiff argues that because of the small size of the court in which both judges work, they must know each other, at least professionally, and thus there is a possibility that Judge Mazer "engaged the trial court judge in private conversation regarding the matter."

This argument is wholly speculative and patently without merit. Although there may have been a strong argument for disqualification if Judge Mazur had been the trial judge in this case, plaintiff has provided no evidence to support the conclusion that Judge Mazur somehow biased Judge Schmucker. Relief is unwarranted.

III

Plaintiff next argues that the trial court erred in dismissing the claim of intentional infliction of emotional distress (IIED). To withstand a motion for summary disposition concerning an IIED claim, a plaintiff must put forth evidence sufficient to create an issue of fact with regard to the following elements: "(1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress." *Johnson v Wayne County*, 213 Mich App 143, 161; 540 NW2d 66 (1995). There can only be liability for IIED if the conduct complained of "has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized community." *Id*. Short of that, a defendant's conduct will not be sufficiently extreme and outrageous to establish a claim of IIED even if done with a tortious or criminal intent or with the intent to inflict emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985). Moreover, some conduct, even though otherwise extreme and outrageous, may be privileged under the circumstances. An actor will not be held liable where he or she has done nothing other than to insist on legal rights in a permissible way, even if he or she is aware that doing so will cause the plaintiff emotional distress. *Early Detection Ctr PC v New York Life Ins Co*, 157 Mich App 618, 626; 403 NW2d 830 (1986). In *Early Detection Ctr*, this court held that the filing of a "groundless" lawsuit falls under this privilege because it is nothing more than an assertion of legal rights in a permissible way. *Id*. The court further reasoned that, aside from being privileged, this type of conduct is not even extreme and outrageous because, by resorting to a court of law for resolution of a dispute, a defendant engages in what a civilized society would consider the most appropriate form of conduct. *Id* at 626-627.

Plaintiff argues that defendant committed IIED in implying that defendant was a racist. However, in light of affidavits by Campbell and Gary Cram claiming that plaintiff made racist

statements in Campbell's presence and expressed a refusal to rent to Campbell on the basis of her boyfriend's race, no reasonable jury could find that defendant was reckless or engaged in extreme and outrageous conduct by making the statements in question and by failing to further investigate the truth of Campbell's allegations of racism, as plaintiff argues.

Moreover, even if, as plaintiff alleges, defendant wrongly stated that defendant refused to rent to Campbell because she had children, such a statement does not amount to extreme and outrageous conduct.

Plaintiff also argues that defendant engaged in IIED by initially assisting Campbell in filing her lawsuit, by continuing to help her pursue the lawsuit, and by helping others to pursue lawsuits. This argument is clearly without merit. As noted, the filing of even a potentially groundless complaint does not amount to extreme and outrageous conduct for purposes of establishing an IIED claim. *Early Detection Ctr, supra* at 627.

Plaintiff argues that it was extreme and outrageous for defendant to present false evidence to a court and to suggest that plaintiff should be required to assist Campbell in defrauding a governmental housing assistance program. These arguments are wholly speculative. There is no evidence in the record to support a finding that defendant knowingly supplied false evidence to a court or required or suggested that plaintiff assist Campbell in defrauding the housing assistance program.

Plaintiff argues that defendant engaged in extreme and outrageous conduct in making the allegedly defamatory statements as discussed in section I of this opinion. As stated earlier, however, plaintiff did not establish the existence of the statements at the various meetings by way of admissible evidence. Moreover, the statements in the newspaper article, even if they could be attributed to defendant, simply dealt with the facts surrounding the lawsuit and therefore were not extreme and outrageous.[4]

Plaintiff argues that it was extreme and outrageous for a local judge and members of the bar to sit on defendant's board of directors because defendant regularly engaged in litigation. This allegation was not raised in the complaint, and we decline to address it.

The trial court did not err in granting summary disposition with regard to the IIED claim.[5]

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[4] As noted in footnote 2, the statement by defendant's director that is in the newspaper does not even refer to plaintiff. Therefore, it is not a proper basis for an IIED claim.

[5] Moreover, we note that plaintiff's discussion of the IIED issue is devoid of legal authorities and could therefore be considered waived for purposes of appeal. See *Palo Grp Foster Care, Inc v Michigan Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998), and *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

IV

Plaintiff next argues that the trial court erred in dismissing the claim of false-light invasion of privacy. To survive a motion for summary disposition with regard to a claim of false-light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, unreasonable and highly objectionable information attributing false characteristics, conduct, or beliefs to the plaintiff that placed the plaintiff in a false position. *Durand v Detroit News*, 200 Mich App 622, 631-32; 504 NW2d 715 (1993). In addition, the plaintiff must show that the defendant acted with knowledge of or in reckless disregard regarding the falsity of the publicized matter and the false light in which the plaintiff would be placed. *Sawabini v Desenberg* 143 Mich App 373, 381 n 3; 372 NW2d 559 (1985).

Plaintiff bases his argument largely on the allegedly defamatory statements discussed in section I of this opinion. The statements contained in the newspaper article were not made with reckless disregard regarding their falsity,[6] and plaintiff failed to establish the existence of the statements made at the various meetings by way of admissible evidence. The additional issues raised by plaintiff in the context of his appellate argument are simply without merit. There is no evidence to indicate that defendant at any time acted in reckless disregard regarding the falsity of the statements identified by plaintiff. The trial court did not err in dismissing the invasion of privacy claim. Moreover, plaintiff has failed to support his invasion of privacy argument with legal authorities. Accordingly, he has waived the issue for purposes of appeal. See *Palo Grp Foster Care, Inc v Michigan Dep't of Social Services,* 228 Mich App 140, 152; 577 NW2d 200 (1998); *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363 (1996).

V

Plaintiff next argues that the trial court erred in dismissing the claim of malicious prosecution. A plaintiff must show the following to establish a claim of malicious prosecution: (1) a prior proceeding brought by the defendant against the plaintiff that terminated in the plaintiff's favor, (2) lack of probable cause to bring that prior proceeding, (3) malice as a purpose, and (4) special injury. *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981). There are three types of damages that will qualify as special injuries for purposes of establishing a claim of malicious prosecution: "injury to one's fame (as by a scandalous allegation), injury to one's person or liberty, and injury to one's property." *Barnard v Hartman*, 130 Mich App 692, 694; 344 NW2d 53 (1983) (internal citation and quotation marks omitted). However, in Michigan, a loss of fame or reputation will only meet the special injury requirement if the injury is of a kind not ordinarily resulting from similar causes. *Id* at 696. If the loss of reputation to the plaintiff is of the usual type normally flowing from the maintenance of a similar action, the plaintiff is wholly without remedy. *Id*. An injury to person or property must amount to a taking, deprivation, or seizure of one's person or property to meet the special injury requirement of a malicious prosecution claim. See *Young v Motor City Apts*, 133 Mich App 671, 676-678; 350

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[6] Even assuming that the article as a whole can be attributed to defendant, the majority of the statements in the article simply concern the filing of a lawsuit by Campbell, and the statement by defendant's director does not refer to plaintiff.

NW2d 790 (1984). "Interference with one's usual business and trade, including the loss of good will, profits, business opportunities and the loss of reputation, is not cognizable as special injuries." *Id*. at 677.

Plaintiff argues that the trial court erred by ignoring certain competent evidence demonstrating that defendant initiated and controlled the federal lawsuit against him. However, regardless whether plaintiff has raised an issue of fact concerning defendant's control of the federal litigation against him, his claim for malicious prosecution must fail because he has not raised an issue of fact regarding whether he suffered special injuries as a result of the filing of that lawsuit. *Friedman, supra* at 48 (proof of special injuries is required to establish a claim for malicious prosecution). Plaintiff's failure to raise an issue of fact regarding whether he suffered special injuries is evident from his deposition testimony. Plaintiff simply did not raise a genuine issue of fact regarding whether he suffered injury to person or property amounting to a taking, deprivation, or seizure. Plaintiff claimed that he ended up at the hospital with a heart condition as a result of the federal lawsuit. He claimed that he had to go to Foote Hospital and was found to have problems with his heart for which he has been taking medication. However, when asked how long he has been taking this medication, plaintiff admitted that he had been taking it since he had bypass surgery in 2000. This was well before the federal lawsuit was filed against him. Thus, it is evident that plaintiff had already been suffering from heart conditions and that they were not necessarily caused by defendant's conduct. Even if plaintiff could prove that the filing of the federal lawsuit caused his preexisting heart condition to flare up, we conclude that this is not the equivalent of a taking, seizure, or deprivation of person. Plaintiff also stated that he has been taking nerve pills since the federal lawsuit was filed against him. However, when asked how often he takes these nerve pills, plaintiff said he takes them off and on when he gets upset. The fact that plaintiff was not nervous enough to take the nerve pills all the time also shows that he has failed to raise an issue of fact regarding whether he has suffered the type of injury to person sufficient to meet the special injuries requirement of a malicious prosecution claim. His nervousness is clearly not enough to amount to a taking, deprivation, or seizure of person. Moreover, plaintiff provided insufficient evidence of any additional injuries that could amount to a taking of his person.

Concerning injury to property, plaintiff claims that he has lost customers since the lawsuit was filed against him. However, "[i]nterference with one's usual business and trade, including the loss of good will, profits, business opportunities and the loss of reputation, is not cognizable as special injuries." *Johnson, supra* at 677.

Finally, regarding injury to reputation, although plaintiff alleges he has suffered a loss of reputation as a result of the filing of the federal lawsuit against him, he cannot even identify any person by name who has, as he claims, told him that his reputation is ruined.

Because plaintiff has failed to raise an issue of fact regarding whether he has suffered special injuries, the trial court did not err in granting defendant summary disposition with regard plaintiff's malicious prosecution claim. While our reasoning today differs somewhat from the trial court's reasoning, as noted earlier, a trial court's ruling that reaches the right result, although for a different reason, may be upheld on appeal. *Mulholland, supra* at 411 n 10.

VI

Plaintiff next argues that the trial court should not have granted summary disposition to defendant with regard to the abuse of process claim. As noted in *Young v Motor City Apartments Limited Dividend Housing Ass'n No 1 & No 2*, 133 Mich App 671, 678; 350 NW2d 790 (1984), "[t]o recover upon a theory of abuse of process, a party must plead and prove an ulterior purpose and an act in the use of process that is improper in the regular prosecution of the proceeding." A plaintiff must allege more than the mere fact that an action was commenced; he must "allege an irregular act in the use of process." *Id.* at 678-679. "[A] plaintiff making out a claim for abuse of process must allege a use of process for a purpose outside of the intended purpose and must allege with specificity an act which itself corroborates the ulterior motive." *Id.* at 681.

The trial court held as follows with regard to the abuse of process claim:

> In this case, Michelle Campbell used process for its intended purpose[:] to bring a claim before the Court of housing discrimination. Plaintiff Robb has not shown how Michelle Campbell abused process. Furthermore, the defendant in this case is not Michelle Campbell, but is the Fair Housing Center. The Fair Housing Center's referral of Michelle Campbell to an attorney is not sufficient to establish abuse of process. Even assuming that the Fair Housing Center encouraged Michelle Campbell to pursue the claim would not be sufficient to bring an abuse of process claim against the Fair Housing Center.

There is no basis on which to reverse the trial court's ruling. First, plaintiff's appellate argument with regard to this issue is, once again, utterly devoid of legal authorities. Accordingly, the issue has been waived for purposes of appeal. See *Palo Grp Foster Care, supra* at 152, and *Magee, supra* at 161. Second, plaintiff failed in his complaint to identify the ulterior purpose for which defendant allegedly caused the lawsuit in question to be filed. *Young, supra* at 678, 681. He also failed to allege "with specificity an act which itself corroborates the ulterior motive." *Id.* at 681. As such, the court did not err in granting summary disposition to defendant with regard to the abuse of process claim.

VII

Plaintiff next argues that the trial court should have granted his motion to "enlarge discovery," which was filed after defendant announced its dissolution. This Court reviews for an abuse of discretion a trial court's ruling with regard to a motion to extend discovery. *Nuriel v YWCA*, 186 Mich App 141, 146; 463 NW2d 206 (1990).

Plaintiff argued below and argues on appeal that because there allegedly existed evidence of "self-dealing and misconduct" by defendant's board members in connection with the dissolution, there was a possibility of uncovering more evidence in support of his case were discovery to be extended. The court, in denying plaintiff's motion, essentially stated that additional discovery would not add anything to plaintiff's claim of defamation.

Discovery should not be extended merely to allow a "fishing expedition." *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004). "Allowing discovery on the basis of conjecture would amount to allowing an impermissible fishing expedition." *Id.* Here,

plaintiff does not even allege which of his claims would likely be supported by further discovery. His motion below and his argument on appeal amount to nothing more than conjecture. Accordingly, it simply cannot be concluded that that trial court abused its discretion in denying plaintiff's motion to extend discovery. *Id.*; *Nuriel, supra* at 146.

VIII

Plaintiff next argues that the trial court erred in requiring the case to proceed to case evaluation. This issue involves a discretionary decision by the trial court and is therefore reviewed for an abuse of discretion by this Court. See, generally, *Stitt v Holland Abundant Life Fellowship (On Remand),* 243 Mich App 461, 472; 624 NW2d 427 (2000). We find no basis for appellate relief.

As noted, this case proceeded to the summary disposition stage, and the trial court granted summary disposition to defendant. Defendant admits on appeal that neither party to this case is entitled to case evaluation sanctions and that "sanctions are not an issue on appeal." Accordingly, it is not possible for this Court to grant relief with respect to the current issue, and the issue is moot. *B P 7 v Michigan Bureau of State Lottery,* 231 Mich App 356, 359; 586 NW2d 117 (1998). We therefore decline to address it.

IX

Plaintiff lastly argues that the trial court erred in granting summary disposition to defendant because there were questions of fact regarding whether defendant was liable for "barratry, champerty, and maintenance." We disagree that this issue warrants reversal.

Plaintiff made a simple statement in his complaint that defendant "engaged in the acts of barratry, champerty, and maintenance." However, he did not expand on this notion, and claims of "barratry, champerty, and maintenance" were not set forth in separate counts of the complaint. Instead, the complaint contained six counts, labeled: (1) defamation, (2) intentional infliction of emotional distress, (3) invasion of privacy, (4) malicious prosecution and abuse of process, and (5) injunctive relief. Defendant addressed these counts in its motion for summary disposition and requested the complete dismissal of plaintiff's complaint. In responding to defendant's motion, plaintiff did not allege that his claim should proceed because of the alleged acts of "barratry, champerty, and maintenance." Accordingly, the trial court did not address those alleged acts. Under the circumstances, this issue has not been preserved for appeal, and we decline to address it.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter